UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

FAIRFIELD COUNTY SPRINKLER COMPANY, INC. Employer [1] and SPRINKLER FITTERS LOCAL 676, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA Petitioner	Case No. 34-RC-1775

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

[1] The Employer's name appears as corrected at the hearing.

4. The Petitioner is the certified collective bargaining representative of the Employer's journeymen and apprentice sprinklerfitters in Connecticut, the unit sought herein. However, it apparently filed the instant petition in anticipation of an Employer challenge to its status as a result of a recent U.S. District Court decision upholding a contractual claim against the Employer by certain benefit plans for unpaid pension and welfare funds contributions. The Employer, however, does not challenge or otherwise contest the validity of the Petitioner's status as the certified representative of the employees involved herein. To the contrary, the Employer has specifically acknowledged on the record herein that it has "always had a collective bargaining relationship with [the Petitioner] since…[it was] certified in July of '94." [2] Rather, the Employer contends that a question concerning representation has been raised by the aforementioned decision. More specifically, the Employer maintains that:

> [b]ecause of the decision of the United States District Court, [Sprinkler Fitters] Local 669 has a claim that it represents the bargaining unit. [Sprinkler Fitters] Local 669 has never disavowed this claim, and [the Employer] has no assurance that [Sprinkler Fitters] Local 669 will not at some future date assert that it represents the employees.

The Employer, a Connecticut corporation, is engaged in the sale and installation of fire sprinkler systems. For some time prior to 1994, the Employer was a member of the National Fire Sprinkler Association, Inc. (hereinafter referred to as NFSA). As a member of NFSA, the Employer had been bound to a series of labor agreements between NFSA and Sprinkler Fitters Local 669 (hereinafter referred to as Local 669), covering all journeymen and apprentice sprinklerfitters, and trainees working for NFSA's employer members within certain territorial areas. Excluded from those areas were, inter alia, those employees working within the State of Connecticut. As a member of NFSA, the Employer had also been bound to a series of labor agreements NFSA had negotiated with the Petitioner covering all journeymen and apprentice sprinklerfitters working for NFSA's employer members within the State of Connecticut.

[2] Indeed, in its post-hearing brief the Employer correctly points out that "[t]here is nothing in the conduct of [the Employer] or [the Petitioner] to suggest that there has been any change in this relationship. There is nothing to support a claim of abandonment or of a withdrawal of recognition."

On or about April 8, 1994, NFSA and Local 669 entered into a labor agreement which was effective for the period April 10, 1994, to March 31, 1997. On May 9, 1994, the Employer withdrew from NFSA. Thereafter, on May 23, 1994, the Petitioner filed a petition in Case No. 34-RC-1262 seeking to become the certified representative for the journeymen and apprentice sprinklerfitters employed by the Employer in Connecticut. As previously indicated, on July 12, 1994, following an election in which the Petitioner was successful, the Petitioner was certified as the exclusive collective bargaining representative for these employees. Although the record indicates that the parties subsequently entered into negotiations but were unable to reach agreement, as previously noted, recognition has not been withdrawn or abandoned.

On August 12, 1998, Chief U.S. District Judge Alfred V. Covello, of the United States District Court, District of Connecticut, issued a decision in *Trustees of the National Automatic Sprinkler Industry Pension Fund, et. al. vs. Fairfield County Sprinkler Company, Inc.,* in which he ruled, inter alia, that the aforementioned 1994 contract between NFSA and Local 669 obligated the Employer to make various pension and welfare fund contributions. [3] In this regard, it is significant to note that the plaintiffs in the district court case were the beneficiary pension and welfare funds, not the Petitioner or Local 669; that the Court specifically limited its ruling to the validity of the plaintiffs' claims under ERISA; and that the Court clearly did not disturb or otherwise question the validity of the Petitioner's certification, or its status as bargaining representative for the employees in question.

Finally, contrary to the Employer's contention, there is no evidence that Local 669 has claimed to represent any of the employees in question. To the contrary, although advised of the pendency of the instant proceeding, Local 669 has declined to intervene in this matter.

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[3] In its district court defense to the plaintiffs' claims, the Employer relied upon a January 31, 1995, decision by the undersigned in Case No. 34-CA-6847, sustained on appeal by the Office of the General Counsel, that "the Employer's failure and refusal to adopt and/or apply the terms of [the 1994 contract between NFSA and Local 669] to work being performed within [the Petitioner's] jurisdiction does not violate section 8(a)(5) of the Act." The Court rejected the Employer's contention, noting that the Petitioner's status as exclusive bargaining representative is not a viable defense under ERISA, and that the Board's refusal to issue complaint on an unfair labor practice charge does not have a collateral effect on a subsequent court action to enforce the terms of a collective bargaining agreement.

Based upon the above and the record as a whole I find that the decision of the Court in *Trustees of the National Automatic Sprinkler Industry Pension Fund, et. al. vs. Fairfield County Sprinkler Company, Inc.* does not raise a question concerning representation. Accordingly, in the absence of any evidence or contention to the contrary, I find that the Petitioner's 1994 certification is still valid and that there exists no other question concerning representation which would warrant the holding of an election at this time. *Seven Up Bottling Company*, 222 NLRB 278 (1976). See also, *NLRB v. Americare-New Lexington Center,* 124 F.3d 753 (6th Cir. 1997), 156 LRRM 2169, 2173. I shall, therefor, dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition filed in this matter be, and it hereby is, dismissed.

Right to Request Review

Upon the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by November 2, 1999.

Dated at Hartford, Connecticut this 19th day of October, 1999.

/s/ Peter B. Hoffman
Peter B. Hoffman, Regional Director
Region 34
National Labor Relations Board

316-6783-3700